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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 643.

BENTLEY W. WARREN and CHARLES W. MULCAHY, as the Trustees of the property of Boston and Providence Railroad Corporation,

Petitioners,

—against—

HOWARD S. PALMER, JAMES LEE LOOMIS and HENRY B. SAWYER, as the Trustees of the property of The New York, New Haven and Hartford Railroad Company, and OLD COLONY RAILROAD,

Respondents.

BRIEF FOR RESPONDENTS.

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THE COURT PRESS, N. J. C.

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Respondents.

BRIEF FOR RESPONDENTS.

Opinions Below.

The opinion and order of the District Court for the District of Connecticut (R., pp. 251-267) is reported in 26 F. Supp. 18. The opinion of the Circuit Court of Appeals (R., pp. 304-310) is reported in 108 F. (2d) 164, *sub. nom. Palmer* v. *Warren.*

Jurisdiction.

The Circuit Court of Appeals' order for mandate was entered on January 8, 1940 (R., pp. 316, 317). The petition for certiorari was filed January 13, 1940 and was granted March 4, 1940. The jurisdiction of

this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. A., Sec. 347).

Question Presented.

The question here is a narrow one, much narrower than petitioners' argument would indicate. The New York, New Haven and Hartford Railroad Company and Old Colony Railroad Company are in a reorganization proceeding under Section 77 of the Bankruptcy Act before the United States District Court for the District of Connecticut. Throughout the proceeding that court, through its trustees, has continued to operate, as a segment of the railroad system in its hands, the line of Boston and Providence Railroad Corporation.[1] This line was long ago leased to the Old Colony, which in turn leased its property to the New Haven. Both leases have been rejected but the Boston and Providence has made no move to reenter and the Connecticut Court has been required under said Section to continue the operation. After rejection of its lease a petition was filed in the Massachusetts Court for reorganization of the Boston and Providence under said Section.

The question is whether the Connecticut Court has jurisdiction to determine the expenses of its custody and operation of the Boston and Providence line and impose a lien thereon for the amount of said expenses.

---

[1] The three railroad companies will be referred to respectively as "the New Haven", "the Old Colony" and "the Boston and Providence". The District Court for the District of Connecticut will be referred to as "the Connecticut Court". The District Court for the District of Massachusetts, in which proceedings for the reorganization in bankruptcy of Boston and Providence were recently commenced, will be referred to as "the Massachusetts Court".

Both the Connecticut Court and the Circuit Court of Appeals found jurisdiction from the fact that the former had taken and retained custody of the physical property of Boston and Providence[2] and had operated that property continuously since the commencement of proceedings under Section 77 of the Bankruptcy Act to reorganize the New Haven and Old Colony. Petitioners slight this controlling fact in the question as they present it to this Court and their statement of the question omits all reference to the fact that the present controversy involves merely the ascertainment of the expenses incurred by the trustees appointed by the Connecticut Court in such custody and operation of Boston and Providence property, and the imposition of a lien therefor on that property. The question is not whether the Connecticut Court may adjudicate a "claim" against the Boston and Providence nor whether the Boston and Providence can be reorganized or its property "administered" for reorganization in the Connecticut Court, despite the ever-recurring contrary implications in the petitioners' brief.

Statement.

Upon approval on October 23, 1935 of the petition of the New Haven for reorganization there came into the custody of the Connecticut Court not only the property owned by the New Haven, but also the property which it had leased in 1893 from the Old Colony, including the property of the Boston and

[2] Petitioners' specification of error No. 3 is inconsistent with the facts in contending that the trustees appointed by the Connecticut Court did not have physical possession of the Boston and Providence property. Those trustees were and still are operating that property.

Providence which the Old Colony had leased from that company in 1888 (R., pp. 36, 69, 183, 252). That property consists of the main line of railroad between Providence and Boston. By its initial order (R., p. 9) the court provided, *inter alia*, for continued operation of the New Haven railroad system and enjoined all interference with all property "belonging to, or in the possession of" the New Haven (R., p. 15). Thereafter, trustees were appointed (R., p. 22) and upon their qualification they took possession of and entered upon the administration and operation of the entire system including the line of the Boston and Providence and several other leased lines.

On June 2, 1936, the New Haven trustees rejected the Old Colony lease (R., p. 29), and the next day the Old Colony petitioned for reorganization in the New Haven proceedings (R., p. 30). This petition was approved (R., p. 44), and the court (R., p. 51) appointed the same persons who were acting as trustees of the property of the New Haven as trustees also of the property of the Old Colony and provided that the latter property should continue to be operated as an integral part of the system by the New Haven trustees, as such (R., p. 53). This property, including the line of the Boston and Providence, has continued to be possessed and operated by the New Haven trustees (R., p. 253), and is so operated now.

The court provided that in case payments were made to comply with the obligations of Old Colony under leases and such leases should be subsequently disaffirmed or rejected by Old Colony or by the Old Colony trustees or under a plan of reorganization

> "the operation of the leased properties shall have been and said payments shall be deemed to have

been made for the account of the lessor, and such payment shall be recovered, set off, or made and charged, on the earnings and properties of the lessor, prior to any mortgage or other lien thereon by such method as the Court shall determine, and further reserving all right and equities of the parties arising from such payments" (Paragraph 9 of Order No. 75, R., pp. 57-59).

No lessor objecting, the court from time to time extended the period for rejection of contracts or leases (R., pp. 318-324, 376).

On May 26, 1937, the Boston and Providence, which from May 1936 had been notified of all happenings in the proceedings (R., pp. 165-167), asked leave to intervene generally (R., pp. 62, *et seq.*) and two days later its petition was granted (R., pp. 90, *et seq.*).

On October 7, 1937, Bankers Trust Company, as Trustee under the New Haven First and Refunding Mortgage, filed its petition for Order No. 217 (R., pp. 92-104) which prayed, *inter alia*, that the court should prevent the further depletion of the assets in the New Haven's estate by directing that further cash payments in connection with the Boston and Providence lease to Old Colony should be discontinued (R., pp. 103-104). An order (R., p. 106), entered by the court upon the same date, provided that if the answer of any party with respect to that petition should challenge or question the segregation of revenues and expenses theretofore prepared by the trustees as constituting a proper basis for the determination of the earnings of the property of the Old Colony or the property of the Boston and Providence, such party should show cause why the issues thus raised should not be referred to the Interstate Commerce Commission "for its recommendation as to the method or formula by which said segregation should

be made, all pursuant to subdivision (c)(10) of Section 77[3] of the Bankruptcy Act as amended" (R., p. 106). On October 21, 1937, the Boston and Providence filed its Answer (R., pp. 362-373) to Petition for Order No. 217 which did so challenge and question the trustees' segregation of revenues and expenses. Other parties to the proceedings did likewise (R., pp. 347, 353, 356, 374). Accordingly the court found that the necessities of the case required a segregation and referred the matter to the Commission for its recommendation (R., pp. 448, 449).

On April 15, 1938, the Interstate Commerce Commission filed with the court its findings and recommendation dated April 9, and on May 25, 1938 these findings and recommendation were confirmed and accepted by the court (R., p. 164).

On April 19, 1938, the New Haven trustees, employing the segregation method recommended by the Commission, filed a report of administration of the property of Old Colony and its leased lines up to and including December 31, 1937 (R., pp. 124-134).

On July 18, 1938, the court entered its Order No. 300 (R., pp. 206, 207) approving said report.[4] The

[3] Sec. 77(c)(10). The judge may direct the debtor or the trustee or trustees to keep such records and accounts, in addition to the accounts prescribed by the Commission, as will permit of such a segregation and allocation, as the necessities of the case may require, of the earnings and expenses between and to the divisions and parts of the railroad or other property of the debtor which are separately subject to the liens of the various mortgages or deeds of trust, or are separately subject to lease, and may refer to the Commission for its recommendations after hearings thereon if the parties shall so request and/or the Commission determine necessary or desirable, as to the method or formula by which such segregation and allocation shall be made; and thereafter such segregation and allocation may be made at the expense of the debtor's estate.

[4] This order was appealed by special counsel appointed by the Court to represent the Old Colony trustees and substantially affirmed. *Palmer* v. *Palmer*, 104 F. (2d) 161, C. C. A. 2d (1939), certiorari denied October 16, 1939.

next day the court entered Order No. 217 (R., pp. 208-210), directing the Old Colony trustees to reject the Boston and Providence lease, and providing among other things as follows (R., p. 210):

> "5. Pending further order of the Court the operation of the property of Boston and Providence for the account of that corporation shall be continued pursuant to subdivision (c)(6) of Sec. 77[3] of the Bankruptcy Act, and since the Old Colony Railroad Company, as lessee of Boston and Providence, and likewise the Old Colony Trustees, are wholly without any operating organization, the operation of Boston and Providence properties shall be conducted by the New Haven trustees in behalf and for the account of the Old Colony estate but without expense to the New Haven estate.
>
> The Court reserves for further hearing the right to determine the existence and amount of any obligation of Boston and Providence arising out of operation of its property or payments made to it or on its behalf prior to the rejection of its lease, and the liability of the Boston and Providence therefor to the Old Colony estate and by way of subrogation to the New Haven estate."

On the same day (July 19, 1938) the Old Colony trustees did reject the Boston and Providence lease (R., p. 211).

---

[3] "Sec. 77(c)(6). If a lease of a line of railroad is rejected, and if the lessee, with the approval of the judge, shall elect no longer to operate the leased line, it shall be the duty of the lessor at the end of a period to be fixed by the judge to begin the operation of such line, unless the judge, upon the petition of the lessor, shall decree after hearing that it would be impracticable and contrary to the public interest for the lessor to operate the said line, in which event it shall be the duty of the lessee to continue operation on or for the account of the lessor until the abandonment of such line is authorized by the Commission in accordance with the provisions of Section 1 of the Interstate Commerce Act as amended."

On July 29, 1938, the New Haven and Old Colony trustees filed their petition for Order No. 301 (R., pp. 213-220) wherein they referred to Order No. 300 (R., pp. 206, 207) and to Old Colony trustees' Exhibit 2 introduced at the hearing on the report of administration of Old Colony property which showed the sum charged against Old Colony earnings and property by Order No. 300 covering payments made under the Boston and Providence lease and expenditures incurred in the operation of the property described in that lease during the period from June 4, 1936 to December 31, 1937 (R., pp. 215-216). The petition asked that the court approve the account against the Boston and Providence and order that it constitute a prior lien and charge on the earnings of the Boston and Providence for the benefit of the Old Colony or New Haven trustees and that if recovered by the New Haven trustees, the charge against Old Colony by Order No. 300 should be correspondingly reduced (R., pp. 216, 217).

On August 4, 1938, The Provident Institution for Savings, a creditor of the Boston and Providence holding its entire funded debt, consisting of unsecured debenture bonds, filed a petition for reorganization of the Boston and Providence under Section 77 of the Bankruptcy Act in the District Court of the United States for the District of Massachusetts (R., pp. 221-226). The petition recited that the Boston and Providence lease had been rejected and that the Connecticut Court had ordered that pending its further order, the operation of the property of the Boston and Providence for the account of that company should be continued pursuant to subdivision (c)(6) of Section 77 of the Bankruptcy Act (R., p. 223). On the same day the Boston and Providence filed answer to the petition admitting the material

allegations therein (R., p. 226). The petition was approved by the Massachusetts Court on August 5, 1938 (R., p. 228) which entered its order enjoining and restraining all persons "from interfering in any manner with the present operation of" the railroad or properties of the Boston and Providence "or the carrying on of its business" (R., p. 228),—*viz.*, it enjoined interference with operation of Boston and Providence property by the New Haven trustees under orders of the Connecticut Court (R., p. 240). Consistently, it has not interfered with the proceedings here involved, although requested by petitioners to do so (R., pp. 248-251).

On August 22, 1938, the Massachusetts Court appointed Messrs. Warren and Mulcahy, petitioners here, as trustees of the property of the Boston and Providence and they duly qualified as such on October 18, 1938 (R., p. 3). Pending their qualification, the hearing on Petition for Order No. 301 was several times continued at the request of the Boston and Providence in order that trustees of its property, fully qualified, might have an opportunity to appear (R., pp. 243, 257, 258). When it finally came on for hearing November 14, 1938 the Boston and Providence trustees, though present, declined to appear on record (R., p. 251), and counsel for Boston and Providence pressed a written statement of objections to the jurisdiction of the court to entertain the petition (R., pp. 244-246). By its order dated January 16, 1939 (R., p. 267) the Connecticut Court overruled these jurisdictional objections for the reasons given in its memorandum of decision thereon (R., pp. 251-267). Boston and Providence and its trustees appealed to the Circuit Court of Appeals for the Second Circuit (R., pp. 271-281, 268-270), which unanimously affirmed the judgment

of the District Court on the jurisdictional question (R., pp. 306-310). That is the only question here involved.

The New Haven trustees have been operating the line of the Boston and Providence ever since their qualification and are continuing to do so as officers of the Connecticut Court and under its direction. At no time has the Boston and Providence, or anyone for it, asked for repossession of its road nor contended that such operation should not be continued.

Summary of Argument.

The nub of the case is that the Connecticut Court has jurisdiction so long as the property is in its custody to determine and charge the property with the cost of that custody. To put it graphically: The Connecticut Court which, through its trustees, is actually paying and controlling the men who operate petitioners' railroad, maintain its roadbed, buy and lay new rail to replace that worn out, spend from trust funds the money necessary to operation and preservation of that property, has power to charge the property so preserved and operated. The Connecticut Court, through its trustees, has thus far been required to continue operation of the Boston and Providence property. Petitioners can at any time petition that Court for repossession but they haven't done so, having developed no ability to operate. And the Massachusetts Court has apparently decided to leave the operation with the Connecticut Court.

Petitioners have at last been driven into admissions that the Connecticut Court has "some sort of 'jurisdiction' over the physical property owned by the Boston and Providence" (Brief, p. 11), but seek to

avoid the plain consequences of this admission. They admit, because the cases overwhelmingly so hold, that an owner to reclaim his property must apply to the court in possession and that that court has jurisdiction to order it restored to him. They needed only to add "upon payment or other provision approved by that court of the charges incurred through its interim custody" to have conceded the entire issue. And surely if a court has jurisdiction to order the property returned, it has jurisdiction to condition that return upon payment or other recognition, satisfactory to it, of its expenses for custody and operation. *A fortiori* it has jurisdiction, prior to return or application therefor, to charge the property with those expenses. The latter is all the Connecticut Court did and all this Court is asked to affirm.

Petitioners, it is true, adopt the premise that the power of the Connecticut Court over property in its custody does not include jurisdiction to "administer" the property of Boston and Providence. This statement is sprinkled like pepper throughout their brief. But their use of the word "administer" is ambiguous. If it refers to jurisdiction to reorganize the Boston and Providence, it does not touch the issue here. If it refers to the power of the Connecticut Court to operate the property of the Boston and Providence, it again does not touch the issue here since the property, being a railroad, must be operated and no one has attempted to oppose or prevent such operation. If, however, the word "administer" means the power incidental to custody and operation to charge the property with the expense thereof, that is the issue here and we submit that the Connecticut Court's power extends that far.

The argument to follow may be summarized under four headings:

1. The physical property of the Boston and Providence came lawfully into the possession and custody of the Connecticut Court at the beginning of the New Haven's bankruptcy proceedings and is still being operated by that Court pursuant to requirement of law.

2. This physical possession and custody gave the Connecticut Court jurisdiction *in rem* to determine the amount and priority of the expense incident to its operation and control and to charge the property in its hands with that expense, regardless of the ownership of that property.

3. This jurisdiction was not superseded by the subsequent bankruptcy proceedings of the Boston and Providence.

4. The rules of equity receivership governing administration of railroad properties are applicable under Section 77 and sustain this jurisdiction.

5. Every practical consideration supports this jurisdiction.

Argument.

The Connecticut Court had jurisdiction to ascertain the charges here involved and jurisdiction to impose a lien therefor upon Boston and Providence property.

I. The physical property of the Boston and Providence came lawfully into the possession and custody of the Connecticut Court at the beginning of the New Haven's bankruptcy proceedings and is still being operated by that Court pursuant to requirement of law.

Before the proceedings began the New Haven, as sublessee of Old Colony, was in actual possession of

the Boston and Providence property. As detailed above, after approval of the New Haven's petition under Section 77, the Boston and Providence property came into the actual physical possession of trustees appointed by the Connecticut court. They have possessed and operated it ever since as officers of the court which appointed them, and under that court's directions. They are doing so now "pursuant to subdivision (c)(6) of Sec. 77", as provided by an order of that Court entered July 19, 1938, the day the lease was rejected (R., pp. 208-211). On August 4, 1938 a creditor petitioned that the Boston and Providence be reorganized under Section 77 in the District of Massachusetts, and the Massachusetts court in approving the petition enjoined any interference with the "*present operation*" of the railroad or properties of the Boston and Providence (R., p. 228). At no time has that company—or any one for it—asked for repossession of its road.[6] The fact of the matter is that respondents have continued to operate it because thus far petitioners have neither asked nor been able to do so.

Thus the Connecticut court, through its officers,

[6] Petitioners advance the suggestion that Section 77(c)(6) is inapplicable because the lessor upon rejection filed no petition for a decree that it would be impracticable and contrary to the public interest for the lessor to operate its line. But the District Court found the lessor, a general intervenor, "wholly without any operating organization" (R., fol. 629) and accordingly held that the Court must continue its custody "pursuant to the provisions of (c) (6) of Section 77" because that subsection left the property in its hands until either (1) the lessor retook it or (2) abandonment was authorized by the Commission. Moreover, the Boston and Providence, having failed to develop ability to operate, admitted in its answer to its creditors' petition that the Connecticut Court had ordered operation of its property by the New Haven trustees for its account pursuant to Section 77(c)(6) and the Massachusetts Court thereupon enjoined interference with such operation (R., pp. 221-228).

assumed actual control and possession of the Boston and Providence's physical property at the very threshhold of these proceedings. Nor was this assumption of control and possession unwarranted.[7] True the leased property was not "owned" by the debtor. But the bankruptcy court's authority to take custody of property has never been limited to property owned by the debtor. It extends as well to all property possessed by the debtor in which he has or is claimed to have some interest which may benefit the estate. This power is nowhere expressly granted by the bankruptcy act; custody is taken simply as an incident to the estate's administration. Times almost without number courts have entered into possession of premises held by the debtor as tenant, both in cases of ordinary bankruptcy, *Gazlay* v. *Williams*, 210 U. S. 41 (1908); *Page* v. *Arkansas Nat. Gas Corp.*, 53 F. (2d) 27, C. C. A. 8th, 1931; *In re Chambers, Calder & Co.*, 98 Fed. 865, D. R. I. 1900; *In re Kleinhans*, 113 Fed. 107, W. D. N. Y. 1902; *In re Schwartzman*, 167 Fed. 399, D. S. C. 1909; *Plaut* v. *Gorham Mfg. Co.*, 159 Fed. 754, S. D. N. Y. 1908; *In re Manhattan Piggly-Wiggly Co.*, 296 Fed. 944, S. D. N. Y. 1923, and in cases arising under the reorganization amendments. *In re Chase Commissary Corp.*, 11 F. Supp. 288, S. D. N. Y. 1935; *In re Penn Victor Dairies, Inc.*, 12 F. Supp. 126, E. D. Pa. 1935; *Eldridge* v. *White & Black River V. R. Co.*, 194 Ark. 800, 109 S. W. (2d) 658 (1937); *cf. Penn. Steel Corp.* v. *New York City Ry. Co.*, 198

[7] Perhaps the court's mere taking of possession, though unwarranted, would give the jurisdiction claimed; but it is not necessary in this case to argue the point.

See *Crawford* v. *Hebert*, 228 U. S. 204, 208 (1913); *In re Tax Service Ass'n. of Illinois*, 305 U. S. 160, 164 (1938); *Story & Clark Piano Co.* v. *Holmes*, 251 Fed. 565, 566, C. C. A. 7th 1918, for broad language.

Fed. 721, 728, 729, C. C. A. 2d, 1912 (equity receivership).

It is true that the leased premises were not within the District of Connecticut. But the authority of the bankruptcy court to take custody of property held by or for the debtor is not limited by state lines even under the provisions of the original Act of 1898. *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734 (1931); *Board of Road Comm'rs.* v. *Keil*, 259 Fed. 76, C. C. A. 6th, 1919; *Galbraith* v. *Robson-Hilliard Grocery Co.*, 216 Fed. 842, C. C. A. 8th, 1914; *Thomas* v. *Woods*, 173 Fed. 585, C. C. A. 8th, 1909; *In re Granite City Bank*, 137 Fed. 818, C. C. A. 8th, 1905. The authority of a court proceeding under Section 77 is—to say the least—not more limited. *Ex parte Baldwin*, 291 U. S. 610 (1934); *cf. Continental Ill. Nat. Bank* v. *Chicago R. I. & P. Ry. Co.*, 294 U. S. 648, 681-684 (1935). Compare also *Palmer* v. *Palmer*, 104 F. (2d) 161, C. C. A. 2d, 1939, in which the propriety of possession in a like case[8]—though not challenged—was assumed by the court. Express provisions of Section 77 for segregation of earnings and expenses between parts of the railroad separately subject to mortgage or lease[9] and for continued operation of leased lines after rejection[10] make it clear that the bankruptcy court is empowered to take possession of the whole system including leased properties. This course has been followed in other reorganizations and

[8] We refer to the period before the Old Colony became a debtor in these proceedings. Though the Old Colony was then potentially eligible for reorganization in the Connecticut court—as well as in Massachusetts—this would seem to have no bearing on the propriety or fact of the former court's possession, at *that* time, of premises leased to the New Haven.

[9] Subdivision (c) (10) quoted in note 3, page 6.

[10] Subdivision (c) (6) quoted in note 5, page 7.

has received judicial recognition. *Eldridge* v. *White & Black R. V. R. Co., supra,* 194 Ark. 800. Indeed, in the case at bar Boston and Providence interests do not seem to challenge the fact or the propriety of the Connecticut court's custody of its property, but rather to deny the consequences of this custody.

II. This physical possession and custody gave the Connecticut Court jurisdiction to determine the amount and priority of the expense incident to its operation and control and to charge the property in its hands with that expense, regardless of the ownership of that property.

Physical possession and custody of the Boston and Providence property gives the Connecticut Court the jurisdiction here exercised to determine the amount and priority of the charge incident thereto.[11]

Where courts would otherwise have concurrent jurisdiction over specific property, the actual possession of it by one of them withdraws the property from the jurisdiction of all others. This principle is not peculiar to courts of bankruptcy but is applicable to all courts, federal or state. *Murphy* v. *John Hofman Co.*, 211 U. S. 562 (1909). It has often been applied in favor of a bankruptcy court, *White* v. *Schloerb*, 178 U. S. 542 (1900); *Isaacs* v. *Hobbs Tie & Timber Co., supra*, 282 U. S. 734 (1931); and it

[11] Petitioners suggest that the reversionary interest of the Boston and Providence was not in possession of the Connecticut Court. As was stated by the Circuit Court below "this misconceives the nature of the doctrine, which depends merely upon possession in the natural sense that the court's officers are in control of the property *de facto* and can exclude all others * * *. Moreover we can attach no meaning whatever to the 'possession' of a legal interest in a thing, except as it means the thing as an object of nature" (R., p. 307). The Connecticut Court, through its officers, has been at all times here material and is now actually operating the Boston and Providence railroad.

has also been invoked against a bankruptcy court where jurisdiction over the property has first been obtained by another tribunal. *Straton* v. *New*, 283 U. S. 318 (1931); *Metcalf* v. *Barker*, 187 U. S. 165 (1902); *Pickens* v. *Roy*, 187 U. S. 177 (1902); *Peck* v. *Jenness*, 7 How. 612 (1849). It is applicable also as between a receivership court and another court, *Wabash R. Co.* v. *Adelbert College*, 208 U. S. 38 (1908), as well as between receivership courts. See *Harkin* v. *Brundage*, 276 U. S. 36, 43 (1928). The jurisdiction obtained through possession by a court proceeding under Section 77 is exclusive in like manner. *Ex parte Baldwin, supra*, 291 U. S. 610 (1934) (where the property was out of the district); *Board of Directors of St. Francis Levee District* v. *Kurn*, 91 F. (2d) 118, C. C. A. 8th, 1937. It remains to consider the nature and extent of this jurisdiction with reference to the facts of the case in hand.

A. This jurisdiction is in rem.

In the first place the jurisdiction of a court to determine questions concerning specific property in its custody is *in rem* and does not depend on obtaining personal service on parties whose interests will be affected by the determinations. *Thomas* v. *Woods, supra*, 173 Fed. 585, C. C. A. 8th, 1909; *In re Granite City Bank, supra*, 137 Fed. 818, C. C. A. 8th, 1905.[12] Sometimes these determinations require the aid of another court's process to make them fully effective—as where an *in personam* order or a judgment *in personam* is sought. Yet even in that situation the power to adjudicate rights *in the property* resides in the bankruptcy court. *Staunton* v. *Wooden*, 179 Fed. 61, C. C. A. 9th, 1910; *cf. In re Wood and Henderson*, 210 U. S. 246

[12] In both these cases the property was outside the district in which the bankruptcy court sat.

(1908). In the present instance the Connecticut Court assumed only to make an adjudication of this kind (R., pp. 265-266), though perhaps it would have been justified in going farther. *Cf. Ex parte Baldwin, supra,* 291 U. S. 610; *Continental Ill. Nat. Bank* v. *Chicago R. I. & P. R. Co., supra,* 294 U. S. 648.

B. This jurisdiction rests on physical possession, not on ownership by the debtors.

A second consideration is more important here. The jurisdiction under discussion has its roots in physical possession and does not at all depend on whether, under the substantive law, some third party may be entitled to possession. This does not mean that third parties are deprived of their substantive rights. But it does mean that they must pursue them in the court which has custody of the property. Thus if one asserts ownership and right to possesion of a chattel held by a bankruptcy court, his remedy is a petition for reclamation addressed to that court. *Kellogg-Mackey-Cameron Co.* v. *Curtice,* 162 Mo. App. 124, 144 S. W. 152; Gilbert's Collier on Bankruptcy (4th ed. 1937) 1247; 5 Remington, Bankruptcy (4th ed. 1936), Sec. 2450. He may not invoke the process of any other court although that process would be appropriate enough under ordinary circumstances, *White* v. *Schloerb, supra,* 178 U. S. 542 (1900); *Murphy* v. *John Hofman Co., supra,* 211 U. S. 562 (1909). He may not even seek an adjudication of his substantive rights—at least if they are disputed on behalf of the estate—in any other tribunal. *Ex parte Baldwin, supra,* 291 U. S. 610, 615 (1934).[13]

[13] He may test his claim in another court, if the bankruptcy court gives him leave to do so. The fact that under some peculiar circumstances such leave ought not to be withheld (*Texas* v. *Donoghue,* 302 U. S. 284, 1937) does not, we urge, impair the general principle or affect its application to the present case.

And the bankruptcy court in possession has jurisdiction to determine his claim though in doing so it decide that the debtor—and consequently the estate—had no beneficial interest in the property whatever. *In re Tax Service Ass'n of Illinois, supra,* 305 U. S. 160 (1938).

Similar principles prevail where a court of bankruptcy holds leased premises. A state court will decline to entertain a suit which concerns their title or possession. *Eldridge* v. *White & Black R. V. R. Co., supra,* 194 Ark. 800, 109 S. W. (2d) 658 (1937) (under Sec. 77). If the lessor elects to declare a forfeiture of the lease, the proper remedy is an application to the bankruptcy court. *Gazlay* v. *Williams, supra,* 210 U. S. 41 (1908) (forfeiture denied); *Lindeke* v. *Associates Realty Co.,* 146 Fed. 630, C. C. A. 8th, 1906 (forfeiture enforced); *In re Barnhardt Coal & L. Co.,* 265 Fed. 385, N. D. Ohio, 1919 (forfeiture denied); see *In re Manhattan Piggly-Wiggly Corp., supra,* 296 Fed. 944, S. D. N. Y. 1923. Even where the trustee has renounced the lease and become, in effect, a trespasser, redress against him is to be sought in the bankruptcy court, *Green* v. *Finnigan Realty Co.,* 70 F. (2d) 465, C. C. A. 5th, 1934; *cf. In re Chase Commissary Corp.,* 13 F. Supp. 83, S. D. N. Y. 1935. For the nature of that court's jurisdiction is such that the landlord's attempts to gain possession through any other court will be enjoined, *In re Chambers, Calder & Co., supra,* 98 Fed. 865, D. R. I. 1900; *In re Kleinhans, supra,* 113 Fed. 107, W. D. N. Y. 1902; *In re Schwartzman, supra,* 167 Fed. 399, D. S. C. 1909;[14] 5 Remington, Bankruptcy (4th ed. 1936), Sec. 2354; *cf. In re Adams,* 134 Fed. 142, D.

[14] In all these cases the landlord's right to the property—under the substantive law of landlord and tenant—was clear.

Conn. 1905; *Plaut* v. *Gorham Mfg. Co., supra,* 159 Fed. 754, S. D. N. Y. 1908; unless, indeed, the other court was the first to obtain jurisdiction over the property. *In re Van Da Grift Motor Car Co.,* 192 Fed. 1015, W. D. Ky. 1912; *cf. In re St. Louis & Kansas Gas & Oil Co.,* 168 Fed. 934, D. Kan. 1908. In the present case the Connecticut court's possession was initially lawful. Even, therefore, if it were contended —which it is not—that its possession has now become trespassory, such a contention should be presented to the Connecticut court which would have jurisdiction to determine it.

Petitioners, to be sure, suggest that this well established basis of jurisdiction has been abandoned under Sec. 77 in favor of "title", but this suggestion flies in the face of all that has been said or decided in the matter. Petitioners' notion is based on language taken out of its context in a note found on page 1467 of Mr. J. W. Moore's 1937 edition of Collier on Bankruptcy. The note discusses the *Rock Island* case, the power of the reorganization court to stay the enforcement of liens, and the effect of Section 77 as "*widening* the scope of the court's jurisdiction to *include* property not in the actual or constructive possession of the debtor." In the course of his analysis Mr. Moore says that the section thus "shifts from the former bankruptcy notions of possession to that of title in determining the court's jurisdiction over the debtor's property and its consequential power to control it." From the whole discussion it is clear he means that the section abandons any *limitation* of jurisdiction to property possessed by the debtor, not that the section abandons possession as a basis of jurisdiction. No more unlikely inference could be drawn from the *Rock Island* case than that Section 77

had contracted powers already possessed by courts of bankruptcy. The section explicitly grants the reorganization court the same jurisdiction it would have had in ordinary bankruptcy (Section 77(l)) and this would surely include the jurisdiction incidental to custody which all courts possess. *Thompson* v. *Terminal Shares*, 104 F. (2d) 1, 8, 9, C. C. A. 8th, 1939, certiorari denied October 9, 1939 states, page 9, that the "traditional jurisdiction" of bankruptcy courts applies to Section 77. A state court has so held in declining to take jurisdiction over premises in the possession of a lessee's trustees. *Eldridge* v. *White & Black R. V. R. Co., supra,* 194 Ark. 800, 109 S. W. (2d) 658 (1937) (under Section 77). And the federal courts have so assumed in practice. Thus, applications for reclamation and repossession of leased premises under Sec. 77B are still addressed to the bankruptcy court and dealt with by it. *In re Lake's Laundry,* 79 F. (2d) 326, C. C. A. 2nd, 1935 (reclamation); *In re Ideal Laundry,* 10 F. Supp. 719, N. D. Cal. 1935 (reclamation); *In re Chase Commissary Corp., supra,* 11 F. Supp. 288, S. D. N. Y. 1935 (repossessions of leasehold); *In re Penn. Victor Dairies, supra,* 12 F. Supp. 126, E. D. Pa. 1935 (repossession of leasehold).[13]

C. This jurisdiction includes power to charge the property in a court's custody with expenses, resulting from that custody, which were paid out of the estate being administered by the court.

The Connecticut court in this case seeks simply to charge the Boston and Providence Railroad property with the amount spent on it out of the New Haven-Old Colony estates during the period of administration. This much a court clearly has power to do to

[13] Although cases arose under Section 77B, there seems to be no difference between the two so far as the present question goes.

property in its physical possession. It may say in effect: *no one* can have this property unless and until he has paid my officers what they have spent on it.[16] Thus in cases where property in the hands of the bankruptcy court is reclaimed, the court may condition its surrender upon the payment of expenses incurred in keeping the property.[17] 5 Remington, Bankruptcy (4th ed. 1936) Sec. 2470. Such charges were imposed by the order in *In re John H. Parker Co.*, 268 Fed. 868, N. D. Ohio, 1920 the court saying,

> "An order will be made directing the materials to be delivered to the Flooring Company upon the payment by it of storage charges. These latter charges were necessary for the preservation of this property prior to the filing of the Flooring Company's reclamation petition and pending [its] determination. * * *. They were expenditures really made for the benefit of the Flooring Company and should be paid by it" (p. 869).

A similar case is *In re J. C. Wilson & Co.*, 252 Fed. 631, S. D. N. Y. 1917. There a bankrupt stockholder's customers were held entitled to reclaim certain securities (or their traceable proceeds) which had been converted. The commissions of the trustee and his attorney were imposed on the general estate (exclusive of the reclaimed property). But, the court reasoned, the trustee had had to engage accountants to unravel the books and trace the stock. And while the trustee represented general creditors, the expense

[16] From this would follow the *power* to disturb existing liens in the property, whatever the *propriety* of doing so.

[17] We are not, of course, directly concerned under the present head with the propriety of such a charge. Yet decisions which impose it, impliedly uphold the power to make it and they must be resorted to since the jurisdiction seems never to have been called into question.

incurred under this head "was for the benefit of the claimants, and work which it would have been necessary for them to have done, if this arrangement had not been made. These disbursements * * * were therefore chargeable to each claimant * * *" (p. 657).

In like manner courts have assumed the power to set conditions upon the surrender of rented property for, " * * * the jurisdiction of bankruptcy court having attached to the exclusion of the jurisdiction at law, the right of the landlord can be enforced only upon equitable terms." *In re Chambers, Calder & Co., supra,* 98 Fed. 865, (wherein the court decided that it alone had the power to decide whether the rights of all parties required that the receiver's possession be continued for a time and, if so, to determine what would be reasonable compensation to the landlord for the delay). Similar notions were applied in a reclamation case where the effective date of the order of surrender was postponed for 60 days to permit the filing and consideration of a plan of reorganization, though the trustee asserted no claim of ownership to the property. *In re Ideal Laundry, supra,* 10 F. Supp, 719, N. D. Cal., 1935.

These cases treat surrender of the property and conditions placed on surrender. In the present case the Connecticut court seeks to impose a lien when surrender is not wanted. But no distinction favorable to Boston and Providence's position can be spun out of this difference. In each situation the court exercises dominion over the property in such a way that those interested in it may redeem it only by complying with the court's conditions; in each there is in effect a lien. In each case, too, the conditions imposed arise directly out of the court's possession or

directly concern the purpose for which the possession was taken. So far as any question of power goes it is submitted that a court may govern the continuance of its custody equally as well as its relinquishment of custody.

A court's jurisdiction over property in its custody is often described in the most sweeping terms as including the exclusive power to determine all questions of title, possession, and control. See, for example, *Murphy* v. *John Hofman Co., supra,* 211 U. S. 562 at 569; *Ex parte Baldwin, supra,* 291 U. S. 610 at 615. Yet perhaps the jurisdiction—at least in its exclusive aspect—is no broader than it need be to protect the possession and the purposes for which possession has been taken. *Cf. Brown* v. *Crawford,* 254 Fed. 146, D. Ore. 1918; *Knudsen* v. *First Tr. & Sav. Bank,* 245 Fed. 81, C. C. A. 9th, 1917; *Mercantile Tr. Co.* v. *Lamoille V. R. Co.,* 17 F. Cas. No. 9432, C. C., D. Vt. 1879. However that may be, no possible limitation on that score concerns the present case. It does not matter whether the court's power extends beyond the limits within which it has been exercised. Petitioners urge that the Connecticut court would be powerless to "administer" their railroad property as an asset of the New Haven-Old Colony estates. It is idle to inquire whether an attempt to do this would be beyond the court's power or merely an erroneous exercise of that power, for the attempt is not being made. Here the court has sought to charge the property only with the cost incurred in possessing it and only to the extent necessary to prevent the diversion of the funds of the estates it is administering. Solely as an incident to this objective is there any dealing "with the lessor's interest in the lessee's bankruptcy." This does not amount to administering the property as an

asset of the estates any more than the enforcement of a bankrupt carrier's lien against a piano transported by the trustee amounts to administering the piano as a part of the estate (*cf.* illustration, p. 36, *infra*). Failure to recognize this fact is a weakness that underlies petitioners' whole argument.[17a]

Petitioners, it is true, urge that the power of a bankruptcy court over property in its custody is limited to (1) determining whether the property is that of the bankrupt and subject to administration as his estate, and (2) administering upon the bankrupt's property. But this is an obvious oversimplification, and by no means follows necessarily from adopting the premise that a bankruptcy court lacks jurisdiction to "*administer*" upon other property than the bankrupt's. Surely the power which flows from custody is broad enough to cover the various purposes and results which custody may involve. If possession entails no expense and exists only for the purpose of determining whether the bankrupt owned the goods,[18] what petitioners urge may be true enough, though even here the court would seem to have the power to make a wrong as well as a right decision on the merits. But possession may be taken or continued for other purposes—as it generally is by a bankrupt

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[17a] Petitioners stray from the record in a footnote on page 41 of their brief to impress this Court with the possible size of the lien. This, of course, is not the issue here.

[18] In cases like this the jurisdiction of the bankruptcy court is sometimes said to extend to property in the bankrupt's possession under a claim of ownership. The language suffices for the purpose at hand, viz., to emphasize the point that jurisdiction depends on the *claim*, not the *fact* of ownership. But, we submit, the language was never meant to limit jurisdiction to cases involving the bankrupt's *ownership*. This appears from all the instances where the bankruptcy court assumed to deal with property which the bankrupt did not claim to own, *e. g.*, the lease cases cited on pages 14 and 15, *supra*; *In re Ideal Laundry*, 10 F. Supp. 719, N. D. Calif., 1935.

lessee's trustee, or as it is under Section 77(c)(6) or otherwise under a public duty to operate—and such possession may involve expense to the estate. Where it does, we submit, the bankruptcy court's jurisdiction is not so circumscribed as petitioners suggest.

The illustration offered on pages 20-21 of petitioners' brief misses the point of our argument. We do not contend that a hypothetical foreclosure or attachment suit brought against the Boston and Providence property in another court during the present proceedings could be enjoined by the Connecticut court. But we *do* contend that if the attaching creditor or mortgagee or his receiver sought possession of the property, this could be done only by application to the Connecticut court which would have jurisdiction to order the surrender and set the terms upon which it might be had. And we *do* contend that if the parties are satisfied to leave the property in the Connecticut court's custody they cannot successfully challenge the Connecticut court's power to impose on the property a lien for the expenses of that custody.

III. The jurisdiction of a bankruptcy court over premises of which the bankrupt was possessed as lessee is not superseded by the subsequent bankruptcy of the lessor (under Section 77, or otherwise).

A. In general.

The next question is whether the jurisdiction of the Connecticut court over the property in its physical possession was superseded—so far as the leased premises were concerned—by the later proceedings to reorganize the lessor under Section 77 in the District of Massachusetts. These proceedings could have that effect only if the court administering them had for some reason a jurisdiction paramount to that of the Connecticut court, which was first in possession.

Buck v. *Colbath*, 3 Wall. 334, 341 (1865); *Gross* v. *Irving Trust Co.*, 289 U. S. 342 (1933). Concededly Congress may make proceedings in bankruptcy superior to any other proceedings which might interfere with the objectives legitimately to be sought by a system of bankruptcy. *Gross* v. *Irving Trust Co., supra*, 289 U. S. 342. Doubtless it may also prefer one bankruptcy court over another. Section 32. It remains to consider whether it has done so in a case like the present. Reference must be had, of course, to the applicable provisions of the statute.

B. The provisions of the Bankruptcy Act.

(1) *Section 32.*[19] This section provides for the situation where more than one bankruptcy proceeding is brought *against a single debtor.* See also General Order VI. But it furnishes no formula for resolving jurisdictional conflicts arising in any other way. Where it does not apply, priority in time of possession is used as the test between two bankruptcy courts, just as between any others. *In re Continental Coal Corp.*, 238 Fed. 113, C. C. A. 6th, 1916; *cf. In re Waxelbaum*, 98 Fed. 589, S. D. N. Y. 1899. Specific venue provisions under the reorganization acts are also obviously inapplicable here.

(2) *The four months' rule.* Under Section 67f. of the Act all levies, judgments, attachments, or other liens "obtained through legal proceedings" against

[19] "In the event petitions are filed against the same person, • • • in different courts of bankruptcy each of which has jurisdiction, the cases shall be transferred, by order of the courts relinquishing jurisdiction, to and be consolidated by the one of such courts which can proceed with the same for the greatest convenience of parties in interest." As amended effective in September 1938 the transfer is made "by order of the court first acquiring jurisdiction".

an insolvent within four months of bankruptcy, are annulled. Narrowly stated, the question is whether a lien obtained in a bankruptcy proceeding is obtained "through legal proceedings" within the meaning of the section. No court has ever made such an application of this section and apparently it has never even been suggested, although courts have construed the words "legal proceedings" to include equity receiverships and creditors suits, as well as actions at law. *Gross v. Irving Trust Co., supra,* 289 U. S. 342 (1933); see cases collected in 11 U. S. C. A., Section 107 note 173. *In re Continental Coal Corp., supra,* 238 Fed. 113, decides inferentially that the words do not include proceedings in bankruptcy, for the first bankruptcy court to obtain jurisdiction was held entitled to retain it, though adjudication in the second court followed within a few days. Section 67 was not even mentioned, though if the first suit had been an equity receivership that section would have applied.

If the matter is regarded more broadly, it becomes apparent that Section 67 was never intended to make one bankruptcy proceeding paramount to another. Surely the congressional objectives are no more to be served by the later than the earlier bankruptcy. Nor has the federal legislature any interest in preferring one bankrupt over another. If each bankruptcy proceeding superseded jurisdiction obtained in earlier bankruptcies—where there was any conflict—unutterable confusion would result, and no observable purpose would be served.[20] It is significant that during the forty years the act has been in force such a result has never even been suggested.

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[20] See comments of the District Court at R., page 263, folio 789, for illustration.

As now amended Section 67 invalidates liens "obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition in bankruptcy or of an original petition under * * *" the Chandler Act. The amendment did not go into effect until September 22, 1938—over a month after the filing of Boston and Providence's petition in the Massachusetts court. But the Act was made applicable to pending bankruptcy proceedings, and it could be urged that any of its provisions which might avoid the Connecticut court's right to hold property in its possession came into play when the amendment took effect. There are, however, no such provisions. In defining the kind of liens which are superseded the new language corresponds exactly with the judicial construction of the old. There is no suggestion that the amendment of this section was designed to make bankruptcy proceedings evoke property from jurisdiction already acquired over it by another court of bankruptcy. Indeed the reverse is true. The Chandler Act sets up new machinery for liquidation (in Chapters 10, 11, 12 and 13) which was thought preferable in some cases to liquidation in ordinary bankruptcy. But the statute clearly contemplates that the former shall supersede the latter only if a certain prescribed procedure is followed; viz., the filing of a petition under the appropriate chapter of the Chandler Act, *in the pending bankruptcy proceeding.* 11 U. S. C. A. Secs. 527, 721, 821, 1021. There could scarcely be a better indication that the peremptory and rough-shod operation of Section 67 was never intended to govern relationships between courts of bankruptcy.

C. The provisions of Section 77.

(1) *Section 77(a)* vests the bankruptcy court with "exclusive jurisdiction of the debtor and its property wherever located" "during the pendency of proceedings under this section and for the purposes thereof". This provision, we submit, was never intended to bear on a case like the present.

There is nothing new about the "exclusiveness" of bankruptcy jurisdiction. *In re Greyling Realty Corp.*, 74 F. (2d) 734, 736, C. C. A. 2d, 1935. It is a word used time and again with reference to jurisdiction under the old act. *Taylor* v. *Sternberg*, 293 U. S. 470, 472 (1935); *Straton* v. *New*, *supra*, 283 U. S. 318, 321 (1931); *Isaacs* v. *Hobbs Tie & Timber Co.*, *supra*, 282 U. S. 734, 737 (1931). But the concept has ever yielded to the jurisdiction obtained by another court through prior possession of property, except where the bankruptcy power was made paramount. *Straton* v. *New*, *supra*, 283 U. S. 318; *Metcalf* v. *Barker*, *supra*, 187 U. S. 165 (1902); *Peck* v. *Jenness*, *supra*, 7 How. 612 (1849); *In re Continental Coal Corp.*, *supra*, 238 Fed. 113, C. C. A. 6th, 1916. Section 77, we contend, does not make these precedents inapposite. See *Duparquet Huot & Moneuse Co.* v. *Evans*, 297 U. S. 216, 222 (1936). As this Court has recently just said of certain phrases in Section 77B: "where words are employed in an act which had at the time a well known meaning in the law, they are used in that sense unless the context requires the contrary." *Thomas K. Case et al.* v. *Los Angeles Lumber Products Company Ltd.*, 84 L. Ed. 22, 29 (1939). The phrase "exclusive jurisdiction of the [debtor's] property wherever located" is well adapted to vest in reorganization courts the territorial latitude and the

ability to override other types of proceedings already accorded to bankruptcy but theretofore withheld from equity reorganizations. This was a principal object of the legislation. See *Continental Ill. Nat. Bank v. Chicago, R. I. & P. Ry. Co., supra*; 294 U. S. 648, 683 (1935); Finletter, Corporate Reorganization (1939), 115 *et seq.* The language will have an office if it fulfills this aim. There is no need to explain it as implying a Congressional preference for jurisdiction gained in one reorganization proceeding over jurisdiction previously gained in another.

A narrower argument which supports respondents' position deserves attention. By the very terms of the statute the Massachusetts court's jurisdiction over Boston and Providence property is not "exclusive" without qualification, but only "for the purposes" of reorganizing the Boston and Providence.[20a] It does not therefore exclude jurisdiction of another court over that property for any other purpose (*e. g.*, as incidental to actual custody and operation of Boston and Providence property), unless somewhere else in the act that other purpose is subordinated to reorganization in bankruptcy so that it may not stand.

Other parts of the act point to the construction we urge as to Section 77(a). Section 77(j) empowers

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[20a] The petitioners argue at page 41 that if the Connecticut Court has jurisdiction to determine the amount and priority of the lien on the property of the Boston and Providence in its custody, "then the Massachusetts Court has only a perfunctory jurisdiction over 'the new allocation of interests in' the Boston and Providence property." Here again they drift from the issue. The Connecticut Court has exercised a jurisdiction which is *solely* incidental to its custody, a custody the Massachusetts Court is not ready to assume. It has made no attempt to reorganize the Boston and Providence nor to interfere with the Massachusetts Court's supervision of the preparation and effectuation of a plan for that company. Whether or not this turns out to be "perfunctory" is not the issue here.

the reorganization court to enjoin or stay the enforcement by judicial proceedings of any lien upon the estate. If, now, Section 77(a) automatically divested every other court of jurisdiction over the debtor's property—however it may have been acquired—then the provisions of subdivision (j) would appear to be superfluous, for they clearly contemplate the stay of proceedings having some validity. Were they intended as an additional remedy against court action which had been wholly nullified, the stay would hardly have been made discretionary. Cases denying the stay impliedly recognize the prior court's authority as something not already supplanted by the approval of the reorganization petition. *In re Mural Holding Corp.*, 75 F. (2d) 941, C. C. A. 2d, 1935.

The interpretation of Section 77B(i) [analogous to 77(i)] declared in the *Duparquet* case is quite inconsistent with an interpretation of Section 77(a) which would make reorganization proceedings automatically override a prior jurisdiction over the debtor's property where an adjudication in ordinary bankruptcy would not have had that effect (see pp. 222, 223). Indeed the court cites Section 77B(a) to show the statute does not do this (p. 223).[21] Of course the *Duparquet* case does not deal with a conflict between reorganization courts. But once let it be conceded that the language of Section 77(a) does not of its own force strike down the jurisdiction of other courts over the debtor's property in all conceivable circumstances, and we are driven to the rest of the act and its history to seek that exception to the general rules of comity which petitioners need to support their position here.

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[21] *Union & New H. Tr. Co. v. Taft Realty Co.*, 123 Conn. 9 (1937) is in accord with this analysis.

(2) *Section 77(i).* Under this subdivision a trustee appointed for a debtor under Section 77 is "entitled forthwith to possession of and [is] vested with title to" property in the hands of "a receiver or trustee" who has been appointed "of all or any part of the property of such [debtor] by a Federal or State court". The question is whether this provision applies to property of the debtor which is lawfully in the possession of trustees appointed by another reorganization court in administering the estate of another debtor.

The provisions of Section 77(i) are practically identical with those of Section 77B(i).

The purpose of the latter sub-section and its interpretation have been recently examined and decided by this Court. *Duparquet, Huot & Moneuse Co. v. Evans, supra,* 297 U. S. 216. The provision was declared inapplicable to a state receivership which was incidental to a mortgage foreclosure suit, though strictly speaking such a receivership is equitable and comes within the literal terms of the act. The court reasoned that the statute came in response to a dissatisfaction with the shortcomings of a system offering only liquidation in bankruptcy and reorganization in equity. These were the remedies "to be supplanted or more efficiently controlled" (p. 219) not receiverships to collect rents and profits in foreclosure actions. So Section 77B(i) is confined in its operation to state or federal proceedings of which "The end was reorganization or liquidation or something akin thereto" (p. 220). Other proceedings and suits which were not intended to liquidate or reorganize the debtor, were unaffected by this subsection though they might effectually result in taking away all the debtor's assets (as they would in the *Duparquet* case).

From this case it clearly appears that Section 77B(i) is aimed at the supersession of any other suit or proceeding *for the liquidation or reorganization of the debtor in question.* As to this debtor, the end of the statute—reorganization—was deemed paramount to the liquidation in ordinary bankruptcy, and the means were deemed superior to the means in equity. But the section discloses no intention whatever to prefer the reorganization of one corporation to the reorganization of another different corporation. It seeks simply to assure that the liquidation of a debtor will be effected under Section 77B (rather than ordinary bankruptcy or receivership) if either the debtor or his creditors desire it. Any possible conflict between the reorganization court and other courts which are not seeking to reorganize or liquidate the debtor's estate but which have run afoul of his property, are left to be handled under Section 77B(c) (10) or its counterpart Section 77(j). After all, Section 77(j) applies only to a trustee or receiver appointed "of * * * the property of a debtor * * *" who is later brought into Section 77 proceedings. It does not apply to the receiver or trustee of anyone else's property even though that other person may happen to be a "debtor" in some independent proceedings, and even though that trustee may happen to have lawful possession of the first mentioned debtor's property. This is conceded by counsel for petitioners but in arguing from the analogy of the statute in the present case counsel overlooks the point just emphasized—that the subsection serves only to make reorganization paramount to other means of liquidation.

(3) *Section 77(j)*, as already stated, authorizes the reorganization court to "enjoin or stay the commence-

ment or continuance of any judicial proceeding to enforce a lien upon the estate". The underlying purpose of subsection (j) is to free a reorganization from interference through ordinary legal proceedings. There is no suggestion that it was intended to give preference to one reorganization proceeding over another. And even though it gave such preference it does not *automatically* divest the jurisdiction of the Court whose proceeding may be stayed, but vests a discretion in the reorganization court as to whether any stay shall issue. *In re Murel Holding Corp., supra*, 75 F. (2d) 941, C. C. A. 2d, 1935; *In re Coney Island Hotel Corp.*, 76 F. (2d) 126, C. C. A. 2d, 1935. In the present case we need not inquire what the effect of such a stay would be. None has issued. Indeed, when appellants sought one at the hands of the Massachusetts Court, the court replied "I am not * * * going to get in any race with the Connecticut Court to decide practically the whole question. * * * I think you ought to present this to Judge Hincks so that he may know exactly what is going on. If Judge Hincks prefers that I decide it up here, I will do it" (R., p. 250). Not only, then, has the Massachusetts Court recognized the Connecticut Court's jurisdiction but it has gone farther and applied the rule of comity to the extent of refraining from the exercise of any paramount power that may have been committed to its discretion. This was but a proper sequel to the initial order in the Boston and Providence proceedings sanctioning continued possession and operation of the property by the New Haven trustees, so there is no need to decide whether the Massachusetts Court could, with propriety, have followed any other course.

An illustration will furnish a summary of the opposing positions. Assume that, in the course of ordinary carrier operations, a freight shipment came into the hands of the New Haven trustees, in Massachusetts. It is true, of course, that the shipment could not be treated in reorganization as part of the New Haven estate. But it is also true that the Connecticut Court would have jurisdiction to determine the claims of the estate *against that property* (*e. g.*, for freight charges) and to impose a lien upon the property for those charges. Suppose that after these charges, or some of them, had accrued (and while the shipment was still in the trustees' possession) the owner of the shipment went into 77B proceedings in Massachusetts. Under petitioners' argument the Massachusetts Court's jurisdiction would thereupon automatically supersede that of the Connecticut Court and the determination of the amount of any carrier's lien would have to be made by the former. On the other hand, we contend that the exclusive jurisdiction of the 77B debtor and its property for the purpose of its reorganization was never intended—in the case put—to oust the Connecticut Court of the jurisdiction resulting from its possession of the shipment—a jurisdiction incidental to the reorganization of another debtor a part of whose estate has been expended on the property in question for the owner's benefit.

To be sure, if the New Haven trustees relinquished the shipment and sought a personal judgment against the owner for freight charges, the principles set forth in *United States* v. *Tacoma Oriental S. S. Co.*, 86 F. (2d) 363, C. C. A. 9th, 1936, would apply. (See Petitioners' Brief, p. 21). But that is not this case.

IV. Equity receivership precedents.

A. Introductory.

Section 77(a) confers upon the bankruptcy court "all the powers, not inconsistent with this section, which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose". It is therefore quite proper to inquire into the extent of those powers.[22] In this inquiry, however, one thing must be borne clearly in mind. Courts of equity labored under territorial restrictions upon their power which made ancillary administration necessary for property outside that territory. The expense and delay of these ancillary proceedings was a principal reason for the adoption of Section 77. That section sought to substitute a single reorganization court for the equity court of principal administration *and all other courts acting in an ancillary capacity*, and to vest it with all the necessary powers.

There are two rules of receiverships which have a present bearing: (1) That governing the relationship between the court of principal administration and the ancillary courts, and the powers of the combined system; and (2) That governing the relationship between the congeries of courts reorganizing a railroad system and a court which had appointed a separate receiver for a company forming part of the system. We shall take these up in the order given.

[22] See comment in 52 Harvard L. Rev. 1356, 1357 (June, 1939) on the District Court's decision in the instant case.

B. In railroad receiverships the court of principal administration was the appropriate forum to decide matters relating to the general management of the trust and the general accounting of the receivers, and to determine what divisions of the system should bear losses incurred through their operation by the receivers, even where these divisions were not situated within the district of that court.

In ordering a computation of losses—if any—in just such a case the Circuit Court for the Eastern District of Nebraska said:

> "It is unnecessary to discuss or decide here whether the circuit court sitting in Colorado or Wyoming is a court of ancillary jurisdiction in the matter of this receivership. These receivers were first appointed in this court sitting in Nebraska. So far as the general management of the trust imposed upon them, the general operation of the railroad system in their charge in this circuit, and their general accounting, is concerned, they must report to and be governed by this court sitting in Nebraska. The impracticability of properly administering this great trust under any other practice, and the intolerable confusion which would result from contradictory orders regarding these subjects made in the different districts in the circuit, will commend this rule of practice to every judge within the jurisdiction; and prevent any interference or modification of the orders issued in these matters by the circuit court for the district of Nebraska, except by appeal or upon rehearing; but the circuit courts in the districts of Colorado and Wyoming have jurisdiction to hear and determine the claims of the citizens of those districts against the insolvent corporation and the receivers of it, and their determination of those matters will be equally respected by the court sitting in Nebraska. Citizens of one district will not be required to go to

another district to assert their claims against receivers appointed by the courts of both districts." *Ames* v. *Union Pacific Ry. Co.*, 60 Fed. 966, 974, C. C., E. D. Neb. 1894.

Later in the same proceedings the determination of such losses was made by the same court and declared a lien on the property of the railroad concerned, which lay wholly outside of Nebraska (*Ames* v. *Union Pacific Ry. Co.*, 74 Fed. 335, C. C. D. Neb. 1896).

A determination by the principal court of segregation accounts and the incidence of operating losses among the divisions (including leased lines) of another far flung railroad system was clearly contemplated by the order in *Central Tr. Co.* v. *Wabash St. L. & P. Ry. Co.*, 23 Fed. 863, C. C., E. D. Mo., 1885.

It is true these orders could have no *in rem* effect on extra-territorial property. The powers and process of ancillary courts were needed for such a purpose. But the ancillary courts were bound, at least by comity, to implement the decisions of the principal court. Failure to observe this rule led to such confusion in the Northern Pacific receivership that the parties chiefly concerned petitioned this Court to assign four Associate Justices to their respective circuits and settle the difference. The Court heeded the petition and the Justices reaffirmed the principles set forth above. *Farmers' Loan & Trust Co.* v. *Northern Pac. R. Co.*, 72 Fed. 26 (1896).

A similar practice obtained where the operation of a railroad system was financed through receivers' certificates (instead of being paid for out of the funds of the general trust estate as it was in the *Union Pacific* case). The issuance of such certificates was regularly

authorized by the principal court which also determined what priorities they should enjoy in the various divisions throughout the entire system. Moreover, this determination was frequently made upon mere notice to the trustees of the various mortgages affected (without any attempt to bring them in as parties to the proceedings or serve them personally), so that the basis of the power exercised could not have rested on jurisdiction *in personam*.

Examples follow:

In *Knecland* v. *Luce*, 141 U. S. 491 (1891), the District Court in Indiana passed an order making receivers' certificates a prior lien on property lying in Illinois and Indiana, but it appeared (p. 498) that a like order had been passed in Illinois.

In *Railway Steel Spring Co.* v. *Chicago & E. I. R. Co.*, a creditors' suit for receivership, the District Court in Illinois ordered the issuance of receivers' certificates which should be a lien on all the debtor's property (in Illinois and Indiana) prior to a Refunding & Improvement Mortgage. The trustee under this mortgage was not a party to the suit and appeared specially to contest the jurisdiction of the court to pass the order. Record in that case, pages 52-57, 62 (order dated Jan. 25, 1913).

In *Guaranty Tr. Co. of N. Y.* v. *Minneapolis & St. L. R. Co.*, which was started as a creditors' suit the District Court in Minnesota, upon a mere order to the mortgages (not parties) to show cause, ordered receivers' certificates to be issued which should be a prior lien on all the railroad property (a good deal of which was outside the district). Record in that case, pages 1098, 1103-6 (order dated April 29, 1924).

In *American Steel Foundries* v. *Chicago, R. I. & P. R. Co.*, a creditors' suit, a similar order was made upon mere notice to the mortgagees whose liens were disturbed, over their special appearance and objection to the jurisdiction. The order decreed that the certificates should be a lien on the entire property (lying in 14 states). Record in that case, pages 233, 285 (order dated June 28, 1915). See also pages 63, *et seq.* (similar order dated April 29, 1915).

It is probably true that these orders could not, of their own force alone, have established a lien on property outside the territorial jurisdiction of the courts which made them. *Lockport Felt Co.* v. *United Box Board & Paper Co.*, 74 N. J. Eq. 686, 70 A. 980 (1908); *cf. Pool* v. *Farmers' Loan & Tr. Co.*; 7 Tex. Civ. App. 334, 27 S. W. 744 (1894); *Farmers' Loan & Tr. Co.* v. *Northern Pac. R. Co.*, 69 Fed. 871, 879, C. C., D. Wash., 1895. Of course a court would have power to issue *in personam* orders which (if obeyed) would result in the establishment of the lien upon property situated anywhere if the court had personal jurisdiction over all parties in interest. *Robertson* v. *Howard*, 229 U. S. 254, 261 (1913); *Fall* v. *Eastin*, 215 U. S. 1 (1909). But in making the orders referred to above the courts were not relying on this principle for in many cases the requisite persons were not (and sometimes could not have been involuntarily) made parties. Rather the courts were relying on the rule that, as courts of principal administration, they had the power and duty to make all adjudications which related to the general management of the trust; and that the courts of ancillary jurisdiction were bound to give to these adjudications whatever local effect was necessary to carry them out. That the power of the principal court to issue certificates and fix their

priority was generally recognized is indicated by the unvarying practice of ancillary courts to authorize in their respective districts the liens established by the primary court.

Thus in equity receiverships there came to be a general practice under which the court that first appointed the receivers who took possession of and operated the properties assumed and was accorded the power to determine all matters relating to the general management of the trust. And such matters included the determination and allocation of earnings and losses among the various branches of the system—wherever situated—for all periods during which these branches were operated as part of the system by the common receivers.

Petitioners, however, point out that the Massachusetts court is not here an ancillary court. They are right. No tribunal in the present proceedings plays that role, for it has been done away with. The foregoing discussion serves only to show the extent of the powers conferred on the Connecticut court by Section 77(a), without regard to possible conflicts with other proceedings not ancillary in their nature. That Court is vested with all powers which an ancillary court in Massachusetts in the New Haven-Old Colony proceedings would have had; it stands in the shoes of the system of courts (principal and ancillary) which would be administering a New Haven-Old Colony receivership. We come then to the second receivership rule.

C. Where separate proceedings were instituted for the reorganization of a company forming part of the system operated by the principal receiver, the principal court was still the one to determine all questions arising out of the operation by its receivers—so long as it continued—and to charge the property with a lien for any net expense which its operation may have caused to the general estate.

The Union Pacific receivership furnished perfect analogies to the Massachusetts court and a rule for settling the very question here presented. *Ames* v. *Union Pac. Ry. Co., supra*, 74 Fed. 335, C. C. E. D. Neb. 1896; Id. 60 Fed. 966, C. C. E. D. Neb. 1894. In these cases two divisions of the system being operated by the principal receivers had separate receivers appointed for them, each in the circuit court for the district of Colorado. In both cases the separate receivers demanded surrender of the premises. In each case the demand was presented to the Nebraska court (which had first appointed the principal receivers) and in each the Nebraska court was the one to determine the amount (if any) of the deficiency incurred by the principal receivers in the operation of the division. In the case of the Gunnison Co. the existence of such a deficiency was found and adjudged to be a lien on the property (situated outside Nebraska) prior to the mortgage. (74 Fed. 335.) This then was the rule in equity receiverships. Unless it has been changed by Section 77 it governs the present controversy for the cases are parallel in every essential particular. There is no basis for finding a change. On the contrary Section 77 expressly confers on the Connecticut Court all the jurisdiction receivership courts used to wield.

V. Every practical consideration supports the decision below.

Petitioners suggest (p. 37) that practicability should be the key to jurisdiction in such a case as this. We

agree and submit that not only the decided cases but every consideration of common sense supports the decision below. The problem of determining the expenses and revenues of the various segments of an operated railroad system is a system problem, and one with which the Connecticut court in possession has been struggling for nearly five years. That court has sought and received the expert assistance of the Interstate Commerce Commission on that problem, which involves many complicated elements. Petitioners admit on page 29 of their brief that a "segregation that did not deal with the entire system revenues and expenses would be useless for purposes of reorganization". It would be equally useless for the purpose of accounting for interim operation, which was the precise purpose for which it was submitted to the Commission (R., p. 106). Petitioners are now suggesting that this Court reverse the courts below and have the Massachusetts Court, which is not operating any part of the system, attempt to adjudicate the results of operation by the Connecticut court of one segment of that system. This would indeed "allow the tail to wag the dog" (*cf.* Petitioners' Brief, p. 42). The receivership cases cited above demonstrate the impracticability of such a suggestion. Out of the long experience of those cases has grown the only workable rule, viz., that the court which is operating the system shall be given power commensurate with that duty.

The practical considerations are well summarized by the statement of Judge Learned Hand in the opinion below as follows:

"No doubt the Connecticut court might, had it

chosen, have left it to the Massachusetts court to liquidate the claim; any court having custody of a *res* may always do that. But there was the plainest justification for not doing so here. Precisely the same questions arose between the New Haven and the Old Colony and had to be dealt with in this proceeding; not only would it have involved a duplication of labor to refuse jurisdiction but it might have resulted in contradictory rulings upon the same issue. The order is affirmed."

CONCLUSION.

The decided cases and every consideration of common sense support the decision below. It should be affirmed.

Respectfully submitted;

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Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 643.—October Term, 1939.

Bentley W. Warren and Charles W. Mulcahy, as the Trustees of the Property of Boston and Providence Railroad Corporation, Petitioners,
vs.
Howard S. Palmer et al., as the Trustees of the Property of the New York, New Haven and Hartford Railroad Company and Old Colony Railroad Company.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 29, 1940.]

Mr. Justice Reed delivered the opinion of the Court.

The Boston and Providence Railroad Corporation in 1888 leased its property, a line of road running between Boston and Providence, for 99 years to the Old Colony Railroad. It has continued as a separate corporation, receiving and distributing its rent, and is not a subsidiary or affiliate of the New Haven or the Old Colony. In 1899 the Old Colony leased its lines, including its leasehold in the Boston and Providence, to the New York, New Haven and Hartford Railroad for 99 years. The New Haven operated its own and the leased property until it was put into reorganization under Section 77 of the Bankruptcy Act[1] in the District Court of Connecticut on October 23, 1935. The trustees of the New Haven operated the Old Colony under the lease until they rejected the lease by order of the court on June 2, 1936. Next day the Old Colony filed under Section 77 in the same Connecticut court as a subsidiary debtor, the court appointed the trustees of the New Haven trustees of the Old Colony, and on June 18, 1936, the court ordered the New Haven trustees to continue to operate the Old Colony as an integral part of the New Haven, the operation being for the account of the Old Colony. The

[1] 11 U. S. C. § 205.

order provided that, in the event leases of the Old Colony were later rejected, payments for operating the leased property and payments of rent under the lease would be deemed to have been for the account of the lessor and could be recovered from the leased property prior to any mortgage or lien thereon. On July 19, 1938, the court directed the trustees of the Old Colony to reject the lease of the Boston and Providence and to continue operation of the road for the account of the Boston and Providence pursuant to Section 77(c)(6). On August 4, 1938, the Boston and Providence was put into reorganization in the District Court of Massachusetts. Previously the system had been operating at a loss and the trustees of the New Haven and the Old Colony asked the Connecticut court to determine the amount of the deficit attributable to the Boston and Providence for the period from June 1, 1936, to December 31, 1937, and to declare that amount a lien on the Boston and Providence in favor of the New Haven and the Old Colony. On January 16, 1939, the Connecticut court decided that it had jurisdiction to grant the requested lien on the Boston and Providence, although that road was under reorganization in another bankruptcy court, and on April 20, 1939, the court entered an order fixing the amount of the deficit and declaring it a first lien on the property of the Boston and Providence. The Circuit Court of Appeals, holding that the Connecticut court had jurisdiction to determine the lien, affirmed the order of January 16, 1939, but concluded that the Boston and Providence had been given no chance to be heard on the merits of the question and remanded the later order for a determination of the "existence and amount of the obligation."[2]

The obligation on which the claimed lien is based arises, so the trustees of the New Haven and the Old Colony contend, from the operation of the Boston and Providence under Section 77(c)(6) by the Old Colony for the account of the Boston and Providence. Petitioners deny that 77(c)(6) was properly invoked and claim that the deficit is not chargeable to them. This phase of the controversy is not before us, for petitioners have brought here only the question of the Connecticut court's jurisdiction to determine the amount of the deficit chargeable to the Boston and Providence and to impose a lien on its property to secure it. If the Connecticut court has that jurisdiction, it will determine whether the deficit is chargeable

[2] 108 F. (2d) 164.

to the Boston and Providence when it determines the "existence and extent of the obligation" pursuant to the order of remand of the Court of Appeals.

The controversy has substance because of the contention of the trustees for the Boston and Providence that, as the court charged with the reorganization of that road (the Massachusetts District Court) has "exclusive jurisdiction" under Section 77(a) "of the debtor and its property wherever located," the Connecticut court cannot consider the claims of the New Haven and Old Colony trustees for operating deficits or impose a lien on the Boston and Providence property to secure them.

The lease of the Boston and Providence to the Old Colony is the type of lease covered by the order of June 18, 1936, by which the trustees of Old Colony were authorized to charge operating deficits against the lessor in the event of subsequent disaffirmance of the lease.

Railroad reorganization in bankruptcy is a field completely within the ambit of the bankruptcy powers of Congress.[3] Under the commerce clause of the Constitution Congress likewise has exercised its power to provide for the continued operation of interstate railroads such as petitioner.[4] The fact that the operator operates under a lease does not affect the force of the requirement that the operation must continue until a certificate permitting abandonment is issued by the Interstate Commerce Commission.[5] The judicial functions of the bankruptcy court and the administrative functions of the Commission work cooperatively in reorganizations.[6] Provision is made by the Bankruptcy Act[7] for the operation of leased property on sur-

[3] Continental Bank *v.* Rock Island Ry., 294 U. S. 648, 667-675.

[4] Interstate Commerce Act, § 1(18), as amended 49 U. S. C. § 1(18):

"Extension or abandonment of lines; certificate required.— . . . and no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity permit of such abandonment."

[5] Cf. Seaboard Air Line Railways Receivers Proposed Abandonment, 202 I. C. C. 543; Norfolk S. R. Co. Receivers Abandonment, 221 I. C. C. 258; Meek and Masten, Railroad Leases and Reorganization: I, 49 Yale L. J. 626.

[6] Palmer *v.* Massachusetts, 308 U. S. 79, 87, note 14.

[7] Section 77(c)(6). "If a lease of a line of railroad is rejected, and if the lessee, with the approval of the judge, shall elect no longer to operate the leased line, it shall be the duty of the lessor at the end of a period to be fixed by the judge to begin the operation of such line, unless the judge, upon the petition of the lessor, shall decree after hearing that it would be impracticable and contrary to the public interest for the lessor to operate the said line, in

render. It is under this subsection that respondent claims to have become entitled to the amount sought in the motion for allowance and lien. This subsection modifies *pro tanto* the rule of the Interstate Commerce Act for operation.

The property of the Boston and Providence came into the possession of the trustees of the New Haven and the Old Colony and remained there during the entire time covered by the claim. These roads were lessees of the property and debtors under Section 77 in the Connecticut court. It is immaterial what title the debtors had, whether a lease or a fee. The physical property covered by the lease was in the custody of the Connecticut court by virtue of the provision of Section 77(a).[8] By virtue of subdivisions 77(c)(10) and 77(c)(6)[9] it is clear that leaseholds are in some instances to be operated by the lessee's trustees.

This Court has held "upon principles of general application" that courts having custody of property or a fund have the power "to require that expenses which have contributed either to the preservation or creation of the fund in its custody shall be paid before a general disposition among those entitled to receive it."[10] Such a power reposes in any court charged with custody of property. It is an in rem jurisdiction springing from possession of the property which is necessary in order that the court may adequately care for the property. Thus a court having custody of a ship is able to secure wharfage by virtue of its power to decree a preferential pay-

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which event it shall be the duty of the lessee to continue operation on or for the account of the lessor until the abandonment of such line is authorized by the Commission in accordance with the provisions of section 1 of the Interstate Commerce Act as amended."

[8] Thompson, Trustee *v.* Magnolia Petroleum Co., No. 481 this term, decided March 25, 1940; Ex parte Baldwin, 291 U. S. 610; cf. Isaacs *v.* Hobbs Tie & T. Co., 282 U. S. 734; Green *v.* Finnegan Realty Co., 70 F. (2d) 465, 466 (C. C. A. 5th); In re Chambers, Calder & Co., 98 Fed. 865 (D. R. I.).

[9] Section 77(c)(10). "The judge may direct the debtor or the trustee or trustees to keep such records and accounts, in addition to the accounts prescribed by the Commission, as will permit of such a segregation and allocation, as the necessities of the case may require, of the earnings and expenses between and to the divisions and parts of the railroad or other property of the debtor which are separately subject to the liens of the various mortgages or deeds of trust, or are separately subject to lease, and may refer to the Commission for its recommendations after hearings thereon if the parties shall so request and/or the Commission determine necessary or desirable, as to the method or formula by which such segregation and allocation shall be made; and thereafter such segregation and allocation may be made at the expense of the debtor's estate." See note 7.

[10] New York Dock Co. *v.* S. S. Poyzan, 274 U. S. 117, 120, 121.

ment.[11] And here the court is able to carry out the operation of the Boston and Providence by promising or granting a lien to those who carry out the operation.

If the Connecticut court has possession of the property and operated it under Section 77(c)(6) for its owners, could it fix a lien on the property after another bankruptcy court took the administration of the property? By Section 77(c)(6) railroads in reorganization which had been operating lines under lease were allowed to reject the lease but required to continue operation of the leased lines if the lessor had no ability to operate. Thus Congress recognized the possible occurrence of the situation now before us and evinced a desire that rail service should not in such a case be interrupted. In view of the public importance of rail service, we think this subsection represents an intention to give the court charged with operation the fullest ability to secure the necessities of operation—an intention to give the operating court power to promise those having the materials, men and equipment needed for operation a first lien on the road to secure payment for the operation.[12] This in no way impairs the operation of Section 77(a) which grants to the Massachusetts court, "during the pendency of the proceedings under this section and for the purposes thereof," "exclusive jurisdiction of the debtor and its property wherever located." The "purposes" of Section 77 include the development of a "fair and equitable"[13] plan of reorganization. The Massachusetts court is left with jurisdiction to accomplish this, but is bound to recognize the priority of the lien declared by the Connecticut court. By Section 77(c)(6) the Connecticut court was given jurisdiction so long as it continued to operate the road to grant a lien for operating expenses prior to any existing claims against the road. The decision of the Court of Appeals that the Connecticut court had jurisdiction to grant the lien sought by respondent is

Affirmed.

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11 *Ibid.*

12 It may be noted that Congress did not adopt the rule of Gross v. Irving Trust Co., 289 U. S. 342, in this situation. In the Gross case property of a debtor had been in the custody of a state receivership court prior to the debtor's adjudication in ordinary bankruptcy. It was held that because of the bankruptcy court's paramount jurisdiction the administrative expenses of the receivership had to be proved in bankruptcy and could not be declared a lien by the receivership court on property in its custody.

13 § 77(e).